

**FILED**

THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

2013 FEB 12 A 10:23

CLERK US DISTRICT COURT  
ALEXANDRIA, VIRGINIA

Liberty Guard, Inc.  
900 Circle 75 Parkway  
Atlanta Georgia, 30339

Plaintiff

v.

TRANSPORTATION SECURITY  
ADMINISTRATION  
U.S. Dept. of Homeland Security  
Washington, DC 20528

Defendant

Civil Action

1:13CV200-GBL/TCB

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

As its Complaint for Declaratory and Injunctive Relief against the Transportation Security Administration (the "TSA") to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), Liberty Guard, Inc. ("Liberty Guard") states:

**I. JURISDICTION AND VENUE**

1. This Honorable Court has jurisdiction over the subject matter of this Complaint pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

**II. PARTIES**

3. Liberty Guard is a 501 (c)(4), non-profit organization that actively informs the public on issues including, but not limited to: matters affecting personal liberty, Constitutional rights and citizens' right to privacy

4. TSA is an agency of the United States Government and is headquartered in

Washington, DC. TSA has possession, custody and control of the records to which Liberty Guard seeks.

### **III STATEMENT OF FACTS AND CLAIMS**

5. On or about November 29, 2010, Liberty Guard sent an FOIA Request (the "Request") [copy attached as Exhibit A] to the TSA seeking records related to the TSA's rules, regulations and policies pertaining to airport security.

6. More specifically, Liberty Guard sought:

any documents you may have which contain any and all Administrative Directives or Memoranda from either the TSA and/or the DHS, or any component thereof, from November 5, 2010 to November 29, 2010, pertaining to instructions to staff, employees or supervisors that affect the public when members of the public are asked to submit to full body scans or "pat downs" while attempting to board aircraft, which have been adopted by the TSA or DHS. I also request any documents which discuss the aforementioned issue and contain the terms "national opt-out day," "Bob Barr", "Opt Out Alliance", "Liberty Guard", "John Tyner", "George Donnelly", "wewontfly.com", "domestic extremists", "drudgereport.com," "Matt Drudge", "prisonplanet.com", "Alex Jones" and any other term or proper name germane to the aforementioned terms and matter.

7. On December 10, 2010, the TSA acknowledged receipt of the Request (the "Receipt") [copy attached as Exhibit B] and assigned it the case number TSA11-0196.

8. The Receipt stated the request would be subject to a ten (10) day extension per 5 U.S.C. § 552(a)(6)(B).

9. Liberty Guard also had contact with an attorney in the TSA's FOIA office (the "Attorney").

10. The Attorney requested clarification on the information sought by Liberty Guard.

11. In a timely fashion, Liberty Guard provided the clarification requested by the TSA

and the Attorney.

12. As a result of the Ten (10) day extension, the TSA had until on or about January 19, 2011 to respond to the Request.

13. During late January, 2011, the TSA responded to Liberty Guard (the "Response") by stating that the TSA had nine (9) pages of records responsive to the Request (the "Information"). *See* Exhibit B.

14. However, the TSA refused to release the Information, stating the Information was exempt from disclosure under 5 U.S.C. § 552 (a "(b)(2) Exemption") and 49 U.S.C. § 114(r) (a "(b)(3) Exemption").

15. On or about February 9, 2011, Liberty Guard submitted an appeal (the "Appeal") [copy attached as Exhibit C] to the TSA based upon the Response.

16. The Appeal stated the (b)(2) Exemption should be inapplicable, as the Request appears to include documents that may represent an important resource that could explain the origins of the TSA scanning program and procedure, one that affects tens of thousands of air passengers in the United States every day.

17. Further undermining the TSA's claim of a (b)(2) Exemption, the Request included information regarding a number of Internet sites and names of specific individuals that may have been mentioned in TSA's documents. Should the TSA be making references to these Websites and individuals, such actions could be construed as violating privacy of said individuals and the Websites in contradiction of the protection of privacy as provided by the Fourth Amendment of the United States Constitution.

18. Finally, Liberty Guard learned that the security program that is a portion of the

Request (hereinafter referred to as the “Program”) was being wound-down by the TSA. As such, release of the documents included in the Request could not lead to a contravention of the law if the law is no longer in full force and effect.

19. Regarding the (b)(3) Exemption, the TSA, as mentioned earlier, is winding down the Program that is the subject matter of a portion of the Request.

20. As a result of this winding-down, disclosure of the documents contained in the Request would not be eligible for the (b)(3) Exemption, as release of the materials in the Request would have little to no impact on transportation security.

21. Finally, the TSA, in admitting the Information exists, is required to provide to Liberty Guard an index of the documents and/or portions of documents, numbering nine (9) pages that have been withheld by the TSA.<sup>1</sup>

22. Liberty Guard has exhausted any and all administrative remedies with respect to the FOIA Request per 5 U.S.C. § 552(a)(6)(c).

#### **IV. CAUSES OF ACTION - COUNT I: VIOLATION OF FOIA**

23. Liberty Guard hereby re-alleges the allegations contained in ¶¶ 1-22 and incorporates same by reference as though they were fully set forth herein.

24. The TSA has violated FOIA by failing to produce an index of the documents and/or portions of documents, numbering nine (9) pages that have been withheld by the TSA.<sup>2</sup>

25. Liberty Guard is being irreparably harmed by reason of the TSA’s violations of FOIA, and Liberty Guard will continue to be harmed unless the TSA is compelled to conform its

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<sup>1</sup> See *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974).


<sup>2</sup> See *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974).

V. **PRAYER FOR RELIEF**

WHEREFORE, Liberty Guard prays that this Honorable Court:

- A. Order the TSA to search for and produce any and all non-exempt records responsive to the FOIA Request, as well as a *Vaughn* index of allegedly exempt records responsive to the request by a date certain;
- B. Enjoin the TSA from continuing to withhold any and all non-exempt records responsive to the FOIA Request
- C. Award Liberty Guard its attorney's fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E)
- D. Award Liberty Guard such other relief as this Honorable Court deems just and proper.

Respectfully submitted by



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